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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS STEVEN SOLDATIS,

Defendant and Appellant.

H043585

(Santa Clara County

Super. Ct. No. C1527028)

Defendant Thomas Steven Soldatis pleaded no contest to the charge of inflicting corporal injury upon the victim, with whom he had a dating relationship (Pen. Code, § 273.5, subd. (a))¹ and admitted a great bodily injury enhancement for a domestic violence case (§ 12022.7, subd. (e)). The trial court suspended imposition of sentence and granted probation for three years subject to terms and conditions, including service of one year in county jail, domestic violence terms, and a no-contact order as to the victim. The trial court also imposed specified fines and fees but stayed payment on those amounts for one year so that Soldatis could pay for the domestic violence classes ordered as a condition of probation.

Soldatis appeals only from the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).) We appointed counsel to represent Soldatis in this court. On appeal, his counsel has filed an opening brief in which no issues are raised and asks this court for an independent review

¹ Unspecified statutory references are to the Penal Code.

of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has declared that Soldatis was notified that an independent review under *Wende* was being requested. We advised Soldatis of his right to submit written argument on his own behalf within 30 days. Thirty days have elapsed, and Soldatis has not submitted a letter brief.

Pursuant to *Wende*, we have reviewed the entire record and have concluded that there are no arguable issues. We will provide “a brief description of the facts and procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed.” (*People v. Kelly* (2006) 40 Cal.4th 106, 110.)

FACTUAL AND PROCEDURAL BACKGROUND²

Santa Clara County sheriff deputies were dispatched to the scene of a reported assault on December 10, 2015. The reporting party told the deputies that the victim said that she had been hit in the head “really hard” with a hard hat five days prior. The victim did not say who hit her, but only “He hit me,” and “he hit me really hard.” The victim was transported to the hospital and treated for injuries to her face, including swelling and pink-purple bruising of her right eye, a small bruise underneath her left eye, as well as bruising on her right-hand knuckles and right arm. She was diagnosed with an “orbital floor fracture” on her lower eye socket and a “closed fracture” of the nasal bone, which meant the bone was fractured but not separated. The victim was reluctant to speak with the deputies and declined to provide details about her assailant.

Several days later, an associate of the victim contacted the Santa Clara County sheriff’s office to report concern for the victim’s safety. The associate told the investigating sergeant that the victim had called him on December 10, asking him to pick her up after the incident with Soldatis. He reported that Soldatis and the victim were in a dating relationship and that Soldatis was “very controlling” and kept the victim in

² The factual circumstances of the offenses subject to the plea are taken from the probation officer’s report dated April 8, 2016, which is based on a report made by the Santa Clara County Sheriff, and from the preliminary hearing transcript.

“solitary confinement.” He also stated that the victim had told him she was afraid that Soldatis was going to kill her and she would “ ‘pay the price’ ” if he was incarcerated.

Deputies arrested Soldatis on December 17, 2015, after a so-called *Ramey* warrant (*People v. Ramey* (1976) 16 Cal.3d 263) was issued for his arrest. At the time of his arrest, the victim was in the passenger seat of Soldatis’s truck. She was wearing wide-framed sunglasses and had significant bruising around her right eye. The sergeant spoke separately with Soldatis and the victim. The victim denied being physically abused by Soldatis. She said that they were sitting in his truck and he had flailed his arms in frustration and accidentally hit his hard hat off the center console, which then struck her in the face. Soldatis told the sergeant that he had become frustrated, exited the truck, and flung his hard hat into the truck, accidentally hitting the victim.

The Santa Clara County District Attorney filed a complaint charging Soldatis with felony assault with a deadly weapon other than a firearm, a “hard hat,” upon the person of the victim (§ 245, subd. (a)(1); count 1) and felony inflicting corporal injury upon the victim, with whom he had a dating relationship, resulting in a traumatic injury (§ 273.5, subd. (a); count 2). After the presentation of evidence and testimony of the victim and other witnesses at a preliminary hearing, the trial court held Soldatis to answer the charges in the complaint. In an information filed on February 11, 2016, the Santa Clara County District Attorney charged Soldatis with the same two felony counts and alleged enhancements as in the complaint.

On March 7, 2016, the parties presented a negotiated resolution to the trial court. The trial court reviewed the plea form and advisement of rights waiver with Soldatis and confirmed his understanding of his rights, the charges against him, and his plea. Soldatis pleaded no contest to count 2 and admitted the great bodily injury enhancement, in exchange for the dismissal of count 1 and a promised disposition of felony probation with conditions that included standard domestic violence terms and one year in county jail.

Based on the advice of his counsel, Soldatis declined an interview with probation prior to sentencing.

On April 8, 2016, the trial court sentenced Soldatis pursuant to the negotiated plea. The court suspended imposition of sentence and placed Soldatis on three years of formal probation with specified terms and conditions, including (1) 364 days in county jail, with credit for 228 days of actual and conduct credits, (2) domestic violence terms, (3) a three-year no-contact order as to the victim, (4) alcohol and illegal drug abstinence and treatment as directed by probation, (5) warrantless search terms, and (6) 40 hours of uncompensated community service work. The court also made provision for a civil standby so that Soldatis would be able to retrieve his dog from the victim's care, as well as other personal items in the victim's possession, after his release from jail. The prosecution also stipulated upon the request of defense counsel that paper work, a cell phone, and the hard hat seized from Soldatis at the time of his arrest would be returned after July 9, 2016.

The court imposed the following fines and fees, stayed for one year to allow Soldatis to pay for domestic violence classes: (1) a domestic violence fund fee of \$50 (§ 1203.097) and a battered person's shelter fee of \$50 (*ibid.*), which amounts the court selected because Soldatis would be serving a year in jail;³ (2) a restitution fund fine of \$300 with a 10 percent administrative fee (§ 1202.4); (3) a probation revocation restitution fund fine of \$300 imposed but stayed (§ 1202.44); (4) a \$40 court security fee; (5) a \$30 criminal conviction assessment fee; (6) a \$259.50 criminal justice

³ The statute requires a defendant under the relevant circumstances to pay a fee of \$500 to specified domestic violence related funds, but the court has discretion to reduce or waive the amount based on ability to pay, in which case the court must state its reason on the record. (§ 1203.097, subd. (a)(5)(A).)

administration fee payable to Santa Clara County; (7) a \$25 presentence investigation fee (§ 1203.1, subd. (b)); and (8) a \$25 per month probation supervision fee.⁴

Soldatis filed a timely notice of appeal. We have conducted an independent review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *People v. Kelly, supra*, 40 Cal.4th 106. We conclude there are no arguable issues on appeal.

DISPOSITION

The judgment is affirmed.

⁴ We note that the transcript of the April 8, 2016 sentencing hearing contains a typographical error insofar as the restitution fund fine is recorded as “pursuant to section 1203.4 of the Penal Code” rather than section 1202.4. The probation and sentencing minute order from the same date also contains a clerical error insofar as the restitution fund fine is recorded as “\$330” rather than \$300. When there is a discrepancy between the record of the court’s oral pronouncement of judgment and the clerk’s minute order, the oral pronouncement generally controls (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070), though the reviewing court may consider the circumstances of the case in determining which part of the record should be given greater credence (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345-1346). Given that section 1202.44 mandates that the probation revocation restitution fine be the same amount as the restitution fine under section 1202.4, we find here that the trial court’s oral pronouncement is controlling.

Premo, J.

WE CONCUR:

Rushing, P.J.

Grover, J.